IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 29441 OF 2004(E)

PETITIONER:

DR.VINCENT PAUL,
CHETTUPUZHA HOUSE, MISSION QUARTERS, THRISSUR.

BY ADV. SRI.P.V.BABY
SRI.R.KIRAN

RESPONDENTS:

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1. THRISSUR URBAN DEVELOPMENT AUTHORITY,
CORPORATION BUILDING, PATTURAIKKAL JUNCTION,
THRISSUR, REPRESENTED BY ITS SECRETARY.

2. SPECIAL TAHSILDAR (LA),
THRISSUR MUNCIPALITY, NOW CORPORATION OF THRISSUR.

3. THE DISTRICT COLLECTOR, THRISSUR.

BY ADV. SRI.K.P.VIJAYAN
SMT.P.F.ROSY
SRI.V.M.SYAM KUMAR
SMT.C.B.SUMA DEVI
SRI.SURESH SAMUEL
SMT.KRIPA ELIZABETH MATHEWS

GOVERNMENT PLEADER SRI. L.G. SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

WP(C) 29441/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE PHOTOCOPY OF NOTIFICATION DATED 18.9.1990 ISSUED BY THE 2ND RESPONDENT.
EXT.P2	TRUE PHOTO COPY OF COMMUNICATION DATED 12.11.1985 SENT BY THE 1ST RESPONDENT TO THE FATHER OF THE PETITIONER.
EXT.P3	TRUE PHOTOCOPY OF COMMUNICATION DATED 2.12.1985 SENT BY THE 1ST RESPONDENT TO THE FATHER OF THE PETITIONER.
EXT.P4	TRUE PHOTOCOPY OF COMMUNICATION DATED 30.8.1986 SENT BY THE 1ST RESPONDENT TO THE FATHER OF THE PETITIONER.
EXT.P5	TRUE PHOTOCOPY OF COMMUNICATION DATED 21.6.2000 SENT BY THE SECRETARY, LOCAL SELF GOVERNMENT (G) DEPARTMENT TO THE 1ST RESPONDENT AND A COPY TO THE PETITIONER.
EXT.P6	TRUE PHOTOCOPY OF JUDGMENT DATED 28.10.2000 IN O.S. NO. 745/1991 OF THE SUB COURT, THRISSUR.
EXT.P7	TRUE PHOTOCOPY OF DECREE DATED 28.10.2000 IN O.S. NO. 745/1991 OF THE SUB COURT, THRISSUR.
EXT.P8	TRUE PHOTOCOPH OF COMMUNICATION DATED 18.1.2002 SUBMITTED BY THE PETITIONER TO THE CHAIRMAN OF THE 1ST RESPONDENT.
EXT.P9	TRUE PHOTOCOPH OF COMMUNICATION DATED 14.5.2002 SENT BY THE PETITIONER TO THE CHAIRMAN OF THE 1ST RESPONDENT.
EXT.P10	TRUE PHOTOCOP OF THE COMMUNICATION DATED 19.5.2003 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
EXT.P11	TRUE PHOTOCOPY OF REPRESENTATION DATED 24.6.2003 SENT BY THE 1ST PETITIONER TO THE 1ST RESPONDENT.
EXT.P12	TRUE PHOTOCOPY OF COMMUNICATION DATED 17.9.2003 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P13	TRUE PHOTOCOPH OF LAWYER NOTICE SENT ON BEHALF OF THE PETITIONER TO THE RESPONDENTS DATED 6.10.2003.
EXT.P14	TRUE PHOTOCOPH OF REPLY NOTICE DATED 28.11.2003 SENT ON BEHALF OF THE 1ST RESPONDENT TO THE PETITIONER'S ADVOCATE.
EXT.P165	TRUE PHOTOCOPY OF THE SETTLEMENT DEED DATED 16.12.1981 OF THE THRISSUR SUB REGISTRY OFFICE EXECUTED BY PAUL IN FAVOUR OF THE PETITIONER.
EXT.P16	TRUE PHOTOCOPY OF THE COMMUNICATION DATED 16.6.1986 SENT BY THE 1ST RESPONDENT TO THE DISTRICT COLLECTOR, THRISSUR.
EXT.P17	TRUE PHOTOCOPY OF THE DECISION NO.21 DATED 7.1.1991 OF THE EXECUTIVE COMMITTEE OF THE 1ST RESPONDENT.
EXT.P18	TRUE PHOTOCOPY OF THE NOTICIE DATED 29.1.2004 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
EXT.P19	TRUE PHOTOCOPY OF THE COMMUNICATION DATED 6.10.1998 SENT BY THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM TO THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R1(a)	A TRUE COPY OF THE COMMUNICATION BEARING NO. C1/4871 (1869)/85 DATED 1.6.1985 SENT IN THIS REGARD BY THE CHIEF TOWN PLANER TO TE THEN SECRETARY OF THE TUDA.

// TRUE COPY //

KNC/- P.S. TO JUDGE.

P.R. RAMAN, J.

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W.P.(C) NO. 29441 OF 2004

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DATED THIS, THE 31ST DAY OF JANUARY, 2007

J U D G M E N T

An extent of 15.91 cents of land in Survey No. 145/2 in Chiyyaram Village in Thrissur Taluk forming part of 34 cents was the subject matter of an acquisition proceeding as evidenced by Ext.P1, a notice issued under Section 4(1) of the Kerala Land Acquisition Act. Serial No.3 of Ext.P1 is the land in question. Though .2400 hectare (34 cents) was proposed to be acquired only an extent of 15.91 cents, as stated earlier, was taken advance possession as early as on 12.11.1985, as evidenced by Exts.P2, P3 and P4. Though the Special Tahsildar (Land Acquisition) eventually made a declaration under Section 6, subsequently no award was passed and the entire proceedings has become lapsed. The land having been taken possession of in advance by the requisitioning authority, namely, the first respondent herein, they proceeded to construct the road and now the land has become part of the road. At the same time, petitioner is not paid any amount by way of compensation.

2. By virtue of Section 11A when an award is not passed within two years from the date of the proceedings, the whole of the proceedings will get elapsed and the proceedings has to be denovo started. But in the present case, after taking possession of the land in advance, they have already formed the road and therefore, at this distance of time, to restore possession of the property to the petitioner will be against public interest and the petitioner only prays that appropriate direction be issued to complete the proceedings. True, the petitioner has not been paid the compensation and necessarily appropriate direction has to be issued in this regard.

3. In the totality of the facts, , the only course open is to direct the District Collector, Thrissur, the third respondent herein, to re-notify an extent of 15.91 cents in Sy. No. 145/2 under the Land Acquisition Act. Since advance possession was already taken, further proceedings shall be completed under emergency provisions and an award shall be passed expeditiously. The first respondent, for the purpose of enabling the District Collector for starting the proceedings denovo, shall make a formal request within two weeks from today and thereupon respondents 2 and 3 shall initiate and complete the proceedings and an award shall be passed as

expeditiously as possible, at any rate, within a period of four months from the date of production of a copy of this judgment.

Though the petitioner has a contention that an extent of 64 cents was surrendered freely for the purpose of formation of another road and while taking possession, more extent than 64 cents was taken possession of, that is a matter on which no materials are placed before this Court to adjudicate upon. Further, the actual extent taken possession of from the petitioner is a matter to be proved based on evidence both documentary and oral. Hence petitioner is relegated to his ordinary remedy of filing a civil suit if such a grievance subsists.

The writ petition is disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-